

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 3, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 315, 1/29/1999
SB 304, 1/29/1999
SB 296, 1/29/1999
Executive Action: SB 82; SB 296

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 315

Sponsor: SENATOR JACK WELLS, SD 14, BOZEMAN

Proponents: Julie Ippolito, Don't Gamble with the Future
Laurie Koutnik, Executive Director, Christian
Coalition of MT

Opponents: REP. ROBERT J. "BOB" PAVLOVICH, HD 37, BUTTE
Riley Johnson, MT Broadcasters Assoc.
Greg Henderson, Banik Creative Group
Janet Drexel, Fifth Ave Advertising
Kevin Skaalure, KMTX Radio
Dewey Bruce, KZMT, KCAP, KAKN Radio
Jerry LaChere, MT Lottery

Opening Statement by Sponsor:

SENATOR JACK WELLS, SD 14, BOZEMAN. I bring **SB 315**. This bill is to limit the amount of advertising that can be spent by the MT State Lottery and to limit it in how it can promote the lottery. This bill would limit it to just print media. Many states are encountering increased advertising and gambling systems with decreasing revenues. I have a chart **EXHIBIT (bus27a01)** from The Weekly Addiction Gambling Educational Report, Harvard Medical School. This chart shows the highest and the lowest six states that do lottery advertising. The top six states, Montana, Arizona, Iowa, Idaho, Nebraska and Washington, Montana spends the most money to advertise our lottery. Our advertising amounts to about 8% of the budget (the operating expenses takes about 24% of the budget). Some indications from my next chart **EXHIBIT (bus27a02)** show that over the past few years, Montana has been dropping in the amount of revenue being taken in. In 1988, the General Fund took in \$8 million. It dropped quite low in 1989 and then rose, but in 1995 it has been steadily declining. However, our advertising budget has been higher than it is now, but it is starting to climb once again. We are spending \$770,000 a year to advertise; whereas the total net revenues taken in were \$9.5 million. After expenses, \$6.6 million goes into the General Fund. This is lower than most years back to 1988.

The state lottery is a business and therefore we can regulate it through legislative action. This bill will curtail the amount we spend on the advertising and if this bill passes, approximately \$670,000 more could be added to the General Fund. When the lottery was first developed in Montana, it was supposed to be the answer to a lot of problems and save taxes and accomplish much good for the state. In many ways, it has not accomplished all that it was suppose to do. Gambling has increased in the U.S. An article **EXHIBIT (bus27a03)** from The New American of February 1999, has asked the question "Has gambling increased in the states since lottery has been prevalent?" The first study they point out was made at the University of Montana. This study

found that 78% of all Montanans gamble and in the past six years compulsive gambling has grown from 2.2% of the adult population to 3.6%. Other studies referenced in this article point out that there is a link between suicide and gambling. In Las Vegas, the highest level of suicide exists in the nation. In Harvard Medical School, a study of made of young people and young people become addicted to gambling at a rate of about three times that of the general population. A survey in New Mexico on gambling in their state indicated that 85% of their 18-20 year old people gamble and more than 1/3 of those have gambling problems. I would like to refer to another article in Perspective, April 1996 **EXHIBIT (bus27a04)** talked about investing in illusion. This references the terminology that is used in advertising for lotteries. In New York, one of the selling points is "all you need is a dollar and a dream". Other techniques are "get from Grand Boulevard to Easy Street--this could be your ticket out". So much of this kind of advertising has become offensive to people. The general public has called on the Legislature to prohibit these tacky and tasteless advertisement. They have objections to the fact that the billboards and electronic media tend to target the young people. They give the message that the lottery is the answer to all your dreams. We need to curtail that message. The national trend is to curtail this in many states. If you consider an analogy of gambling to smoking and alcohol, there are many programs that are trying to reduce the targeting of our younger people so they will not become involved in smoking and drinking. There are certain prohibitions on advertising of alcohol. Gambling should be on this list. The last point is that when I was in the House and sat on the Tax Committee, we had bills that would encourage and produce Boards or funding to conduct gambling addiction treatment. I objected to some of those bills from the standpoint of the fact they we, as a state, introduced gambling in Montana, we built the lottery up, we advertised it and now we want to go back and take tax money from somewhere and treat people who are victims of this system that we have developed. I have an aversion to this where government creates a problem and then government has to do something else to solve the problem. So let's reduce the system that we use to promote the lottery. I know this impacts businesses like radio and television. I don't like that aspect of it in the sense of reducing some business. I haven't seen many bills carried up here that don't gorge someone's ox one way or another. I have mulled this all over and tried to think of a way to have a compromise. I just wanted to let you know this. I will wait for the closing.

Proponents' Testimony:

Julie Ippolito, Don't Gamble with the Future. She gave her testimony and handed in the written copy **EXHIBIT (bus27a05)**.

Laurie Koutnik, Executive Director, Christian Coalition of MT. I rise in support of **SB 315**. It has been a concern of mine that our entire state has continued to grow in dependency and addiction on gambling and gambling revenues. I was astounded when I first learned of how much money we were spending just on advertising alone for the lottery. And then to learn that Montana had the distinction of being the number one leader in spending on advertising. When this idea was sold to us a few years back, it was billed as bailing out the education retirement fund. Since then, MEA has said keep the money it doesn't even constitute a small portion of what is needed. We probably are spending more on the treatment of the addictions of people than what it actually generates back to the state. One out of every three dollars spent goes to the General Fund and much of that money then goes to treat all the pathologies associated with addictions. I would like to speak to this bill from a business perspective. My husband and I are self-employed as many of you on this committee are and I would ask you how many of you spend the percentages of money that the lottery spends to advertise and promote their own business. We do have the right to regulate and as we are the guardians and protectors of the people's tax dollars we do have the responsibility to regulate this industry. There are ways that the lottery can still be advertised, and even though some of the opponents will take a small hit, in the long run it will best benefit the citizens of our state. As you drive through the state and this city, look at where the lottery is advertised. To have a billboard near a school or church is somewhat offensive. I found it ironic that one of the biggest billboards here in town has another billboard next to it that says: what does the Bible say about this. We need to be responsible in how we are advertising to our people and our children. We are promoting false dreams and promises. We should regulate the industry and that means the advertising as well. The federal government has allowed the states to regulate against the advertisement of gambling over radio ads. This may be the first step in looking at what the state's role is in being responsible to their people. I have a letter that I will read from Betty Waddell who represents the MT Assoc. of Churches **EXHIBIT (bus27a06)**. I urge you to support **SB 315**. Thank you.

{Tape : 1; Side : A; Approx. Time Counter : 18.5}

Opponents' Testimony:

REP. BOB PAVLOVICH, HD 37, BUTTE. I come in opposition. I have a handout from Becky Erickson, Chairman, MT Lottery Commission

EXHIBIT (bus27a07). Sixty-nine percent of the people of Montana voted for the lottery. This is a bill that wants to curtail the advertising of the lottery. You need to advertise to promote your business. If you think this is a good bill, then I would suggest an amendment to this bill and sell the lottery to a private enterprise in the state so that the state is not involved in it anymore. Then they could pay their taxes and the state would be in a fine position. Thank you.

Riley Johnson, MT Broadcasters Assoc. I see two things in the bill. First it is an attempt to control advertising expenses and put it into statute. I submit that is not good legislation. The second thing it is attempting to do is to control the marketing, the sales tools. This bill is saying, kill the lottery. The anti-gambling people tried to do that in 1997 with a straightforward bill. It didn't succeed. Now they are trying to do it in bits and pieces. If you don't want the lottery, sell it. I will read a letter from Steve Benedict, a former senator **EXHIBIT (bus27a08).**

Greg Henderson, Vice-President, Banik Creative Group. We do the advertising for the MT Lottery. We work to not target anyone. We try to identify those between 24-54 years old who will hear and see the advertising. We do state the odds and it is gambling. We don't try to lure anyone into false hope. We don't ever promise that if they spend a buck they will win a million. We base our advertising on reality. We interview people who have won a dollar or two. We view this bill as killing the lottery. I suspect that Montana is not the number one spender in advertising, but that those figures are based on a per capita figure. We spend \$700,000. This might be a large amount of money but you can't tie this scenario to small business advertising. I hope you will kill this bill here.

Janet Drexel, Vice President, Fifth Avenue Advertising. I was the Director for the MT Lottery from 1989 through 1993. I am an aggressive marketer. During my tenure, I increased sales 216%. I have a Masters degree in business and did a study on impulse buying behavior. Scratch tickets are an impulse buy. I spent years going to school to effectively spend advertising dollars to reach the market--our players. I did research at the lottery to determine who our players were and to make sure we did not target the poor, the young. Our research showed that the average player in Montana was a middle-aged gentleman, middle income, blue collar. I see this bill as one to kill the lottery. If this is the idea, a bill needs to be written to sell the lottery. I think the figures used were on a per capita basis. We didn't spend the most money. We shouldn't be deciding what medium is the best to reach the players. Print medium is fine, but for an

impulse buy, print is not a good buy. The lottery keeps supporting Montana businesses.

{Tape : 1; Side : A; Approx. Time Counter : 32.6}

Kevin Skaalure, KMTX Radio, Helena. I am opposed to **SB 315**. At a time when we are looking for tax revenues in other ways to support the state, this is hardly the kind of bill to push through. If we are looking to tax people as users, this is a bill that flies in the face of that. Instead of preparing a path for our children, perhaps we should prepare our children for the path. Let the path worry about itself.

Dewey Bruce, General Manager, KZMT, KCAP, KHKR. The bill is to kill the lottery. As a broadcaster part of our money comes from the lottery, but not a huge percent of our billing. I am opposed to it.

Informational Testimony:

Jerry LaChere, Director, MT Lottery. In 1987, Missouri reduced their media production from \$13 million to \$3 million. They eliminated TV and newspaper. This resulted in a 25% of their sales for a period of 16 weeks. In 1988, their budget was reinstated. In 1992, the Legislature reduced the lotteries advertising budget from \$5.5 million to \$800,000. The result of this in Connecticut, they dropped 18% in sales and eventually they put back a portion of their budget. In Newfoundland, a province of Canada, they had a restriction in Newfoundland, they lost \$34 million and a decrease of 14% over four years. In 1996 they reinstated the advertising expense and they have gotten back to the level of where they were before.

{Tape : 1; Side : A; Approx. Time Counter : 39.1}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked **Ms. Koutnik** if she were in support of the 1997 legislative bill that asked to privatize the lottery. She responded that she wasn't sure if she had or not, but she would be in support of privatizing the lottery or any entity of the government. **SEN. SPRAGUE** asked if it were privatized, would she be recommending legislation to regulate a privately held business to limit its advertising to print only. **Ms. Koutnik** said that any responsible businessman would not be spending 25% of their income to promote their business. **SEN. SPRAGUE** asked if a picture is worth a thousand words, is limiting the advertising to print a good idea. **Ms. Koutnik** replied that no matter where

the image is whether in print or on TV or on billboard, promoting the lottery is detrimental to our society. We have tried to look at where the majority of the money is being spent, and taking that into account, that is the reason behind this bill.

SEN. GLENN ROUSH asked **Mr. Henderson** if his agency does the billboards or if he hires it out. **Mr. Henderson** said they don't actually place the billboards specifically. They contract with the vendors, LaMar Advertising. The placement is limited to what is available. If they ask for three, they don't know where those three will be placed. They can't pick the streets or places.

{Tape : 1; Side : B; Approx. Time Counter : 0}

SEN. ROUSH asked **Mr. LaChere** about the information that was presented about billboards being placed near churches and schools. He asked if the lottery supported putting these things near schools and churches. **Mr. LaChere** said they have no intention of doing that, but they take their chances on where the placement will be.

SEN. BEA MCCARTHY asked **Mr. Henderson** about the placement of billboards. He replied that is catch as catch can.

SEN. VICKI COCCHIARELLA stated that she felt the bill was unconstitutional by limiting a certain kind of media from being involved in this issue. **Mr. Bart Campbell** replied that, if a certain amount of money were offered, he would take a case on either side of that question. **SEN. COCCHIARELLA** asked **SEN. WELLS** why he chose to discriminate against the electronic media and not other kinds of media. **SEN. WELLS** said that when this bill was brought to him, the argument was made that the younger people listen to the radio, watch TV but don't read the newspapers as much. He agreed that was true to some extent. The people they are trying to discourage from participating in the lottery or other kinds of gambling, and by law are prohibited from gambling in the casinos, are those people who utilize the electronic media in a greater proportion.

SEN. MCCARTHY said there is a program in the Anaconda/Butte area that use newspapers in the schools. Should she now go through the newspapers and snip out the ads that pertain to the lottery.

SEN. WELLS responded that Bozeman has a similar program with the newspapers. All the advertising could and should not be eliminated from newspapers. There are other ads in newspapers that are not necessarily appropriate. He is not saying to censor everything. There are examples of targeting and these will be pointed out in closing.

SEN. SPRAGUE asked **Mr. LaChere** if the lottery would be privatized, would these limitations have an effect on the selling price to another entity. **Mr. LaChere** said it would diminish it from the stand point of being the kind of asset that you would want to purchase.

Closing by Sponsor:

SEN. WELLS closed. When I was asked to carry this bill, my first reaction was "Are you trying to kill the lottery?". If so, then let's draft a bill to do that. That was not the intention. The reduction in advertising would not kill the lottery. One opponent stated that some tickets are impulse buying. I contend the majority is impulse buying. When was the last time you bought a lottery ticket? Did you do it because of an ad on the radio? The last time I bought a ticket was when I walked into the service station to pay for my gas. Some ads have been offensive to people and have targeted certain groups. People in this room do not respond to these kinds of ads, but the younger people do respond. Here is an ad **EXHIBIT (bus27a09)** from a newspaper. "Bob was always a wild card, For those of you who like to do things differently, there is a new game in town." Most of us would not respond to that. We have established our point in life. But the young people like to do things differently. They want to be different. I propose that they would respond to that. Mr. Henderson said that they don't target the young. There was an ad that I was told about that said, "Pay for your college education--win the lottery." If this is true, this is definitely a targeting message. We heard about the number of states who had reduced their advertising and their sales dropped. I assume those figures are true, but there are only two states who do not have a lottery. I am sure I could find some states who had reduced their advertising and their sales had gone up. Also, it was stated that the figures I used must have been based on per capita. It is not based on per capita! This chart that I showed you where Montana spends the most is based on percent of lottery sales. I am aware of the decrease in business to some of the electronic media. One of the opponents did mention that it was not a great deal of his business, but would be an impact. For that reason, I would like to see this whole lottery business privatized. Possibly in two years, we can present that idea. Thank you for a good hearing.

{Tape : 1; Side : B; Approx. Time Counter : 11.4}

Sponsor: SENATOR DON HARGROVE, SD 16, BELGRADE

Proponents: Frank Cote, Deputy Insurance Commissioner
Al Pontrelli, MT Assoc. of Life Underwriters

Opponents: Roger McGlenn, Independent Insurers Assoc. of MT
Bob Abbott, Charter Life Underwriter

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD 16, BELGRADE. This bill is about the protection of those folks who provide insurance for us. An insurance agent can get a license to sell insurance and they can get a license to consult. They take a 10 question test. The proposal before you today is to allow those who have completed a professional course, there are about 50 different ones, to obtain the license without this little test. The education that they must receive to get a professional license provides more instruction, more course work and more competency. The test is redundant and unnecessary. The professional courses are listed in the bill that would allow this exclusion. There is a bill in the works to issue a new test. It would be more comprehensive and longer. It would be useful for those who have not completed a formal course work for a designation. This bill removes a little bit of government from our lives. I urge your favorable consideration.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner. I hold a CLU and a LUTCF. I do have some professional designations--a Charter Life Underwriter that took three years to get that designation. I also spent three years getting my Life Underwriter Training Counsel Fellow. Those two designations are substantially different in what they do and the amount of energy and knowledge to get those designations. It was difficult to get the CLU. The reason this bill is before you today is to eliminate some of the governmental regulation. There are appropriate places for government regulation and places where it is not needed. The Commissioner of Insurance can adopt rules to allow certain individuals who have met professional designations in the insurance area to be able to get licenced as a consultant if they choose without having to take the exam that is given by our Dept. I don't think we should include those who have only the LUTCF because they don't have enough knowledge and learning required for that designation. The reason you don't have the list of all the designations to be put into statute is that we don't think

that is appropriate. We think it is appropriate to have a discussion among the insurance professionals in the rules process where people can say this makes sense to have a CLU and doesn't make sense to have a FIC or whatever is out there. The list that would be agreed upon would make up the list. There is one technical glitch in the bill and it is the very last sentence. It say 4A and it should be 3A.

Al Pontrelli, MT Assoc. of Life Underwriters. As a point of information, there are two types of consultants. One is for the life and health or disability aspect and the other is for the property/casualty aspect. There are two completely different requirements for those kinds of consultants. We support this bill as a professional organization. It seems unnecessary for people to duplicate the efforts that go into being a CLU. I have a CLU designation and Charter Financial Consultant, CHFC which are both sponsored by the American College. The courses that were briefly mentioned usually take on the average about five years. There are 10 examinations which require a great deal of study. Some people have to take these exams two or three times. These are college level exams. The American College who created the curriculum for the CHFC and the CLU, is a regular college who has an accreditation and has been in existence for 75 years. For a candidate to use the CLU or the CHFC designation must also have recommendations from his community that he is of good character and is credit worthy. There is also an internship of three years before one can use the designation. The consumers are well served by the professionals. We urge a Do Pass.

Opponents' Testimony:

Roger McGlenn, Executive Director, Independent Insurance Agents of MT. We rise in opposition to **SB 304**. As mentioned before, there were two items in the Insurance Department's housekeeping bill which the Dept. shared with us in July of 1998. One was to allow them to out-source the examination. We are in agreement that the current examination is extremely poor and not representative of a high state of competency. We strongly support that. We do object to adding exemptions from taking the exam under the housekeeping bill and true to the word of the Insurance Dept., they have removed that from the housekeeping bill to avoid having controversial items in that bill.

The Consultants Law in Montana is the only way we are aware that you can charge a fee to an insurance consumer. The only other way that we are compensated is through commissions. The bill was originally introduced to prevent what Sen. Regan used to call "double dipping". This was to prevent an insurance person from collecting a commission while charging a fee for services. This

law requires a written memorandum to be entered into between a licenced consultant and an insurance consumer outlining services to be performed and fees to be charged as allowed by the consultant's license under Montana law. Prior to 1997 there were exemptions from testing. There were also exemptions for those holding designations with the American Actuarial Society, etc. In 1997, HB 47, by then Rep. Fred Thomas, did away with these exemptions saying all persons desiring to become a consultant would take the exam. In 1993 at our request, Rep. Kasten brought a bill that allowed charging of licenced consultants' fees as long as they did not receive a commission on the same line of coverage. This significantly expanded the ability of consultants to charge fees.

House Bill 304 in 1993 significantly expanded the ability of consultants to enter into consulting agreements and charge fees to Montana insurance consumers. Yesterday, I checked with the Dept. and there are currently 50 licenced consultants in Montana. There are 25 property and casualty consultants and 25 life and health consultants. There are 37 who are resident Montana consultants and 13 non-resident Montana consultants. We have seen increasing numbers of consulting services and fees in the last couple of years. I have seen consulting agreements or memorandums entered into for well in excess of \$20,000 per consultant.

These are some of our concerns relating to the exemption of people from taking this test. There are over 50 recognized professional designations and anyone who has earned it can be proud of that designation. We believe that in an administrative rule situation, all argue for exemption for their designation. We run a class at the Montana Insurance Education Foundation that is called CIC or Certified Insurance Counselor. They must pass five institutes and takes over two years to acquire that designation. We would urge the Commissioner to include these people in this list of exemptions. Chartered Property and Casualty Underwriter, CPCU, is our masters degree in insurance. There are no continuing education requirements for CPCU unlike CLU. They have a continuing education plan.

The reason I bring this up is that you could earn your CPCU designation, work for an insurance company for 25 years in the accounting or marketing department, retire from that company, move to Montana and begin being a consultant and not have to take the exam and prove a competency level. Once you acquire that license, then you are required to comply with Montana continuing education laws. We believe that consultants should be able to demonstrate a high level of competency, passing an appropriate test that at the time of licencing is the best way to demonstrate this level of competency. We believe that a test helps establish

a uniform threshold of competency for consultants in Montana. If this bill passes, it may benefit a number of my members. We are not sure, though, that it is in the best interest of the Montana insurance consumer. For these reasons, we oppose **SB 304**. Should the committee pass the bill, we asked you consider the amendment that was pointed out by Mr. Cote and we would like you to consider on line 20 to change the word "may" to "shall". We definitely want the Commissioner to set these standards.

{Tape : 1; Side : B; Approx. Time Counter : 32.5}

Bob Abbott, Charter Life Underwriter. I have been a licenced consultant in Montana since 1982. I am in opposition to this bill. The word "may" should be "will or shall". The CLU, the CPCU, the CHFC and some others are college level courses. Courses like LUTC which I have taken are not college level courses. They are designed primarily to get the person out in the field and make some money. Everyone is going to argue for these various designations. I feel they should be stated rather than allowed by the Commissioner's office.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Mr. Pontrelli** if there were reciprocity on the CLU throughout the U.S. **Mr. Pontrelli** said yes. It covers the nation. **SEN. MCCARTHY** asked if this were true with the other designations. **Mr. Pontrelli** said yes.

SEN. FRED THOMAS asked **Mr. Cote** which would better prepare a person to be a consultant: one would be to take this test, and you could take a Canol Morton school to pass this test or another option would be to develop your CLU or others that take several years. **Mr. Cote** said that in his opinion, based just on the two given examples, he would say you would have a much rounder, broader knowledge by getting your CLU or your CPCU than you would by taking the current exam. **SEN. THOMAS** said that you don't have to have a degree to take the current exam for consulting. **Mr. Cote** concurred.

SEN. MCCARTHY asked **Mr. Cote** if one needs to be a high school graduate to take the exam. **Mr. Cote** said you do not need to be a high school graduate.

SEN. JOHN HERTEL asked **SEN. HARGROVE** if he felt that this bill would lower the level of expertise and that the consumers would be adequately served by consultants not taking the exam. **SEN. HARGROVE** said that a minimum level of competency would be established and would increase competition and would benefit the consumer.

Closing by Sponsor:

SEN. HARGROVE closed.

{Tape : 2; Side : A; Approx. Time Counter : 0}

HEARING ON SB 296

Sponsor: SENATOR LINDA J. NELSON, SD 49, MEDICINE LAKE

Proponents: Ralph Peck, Director, Dept. of Agriculture
Bob Stevens, MT Grain Growers Assoc.
Scott Kulbek, MT Farm Bureau Federation
Gary Wiens, MT Electric Co-op & MT Farmers Union
David Sagmiller, MT Ag Business Assoc.
Candace Payne, Women Involved in Farm Economics

Opponents: None

Opening Statement by Sponsor:

SENATOR LINDA J. NELSON, SD 49, MEDICINE LAKE. Senate Bill 296 revises the cooperative marketing act in regards to farm cooperatives. It is patterned after North Dakota's. They have had great success in forming farm cooperatives. In my area, two years ago, the rural electric cooperative purchased the safflower plant in Culbertson because the mother company wanted out and had plans to close it. There were moments of panic. The cooperative did this and saved jobs and helped the agricultural economy. The next move was to get the rural electric cooperative out of the picture and have a group of farmers form their own cooperative to run this business. Montana's archaic laws in forming cooperatives were just too cumbersome and the cooperative was actually formed in N.D. much to my chagrin. Facilitating farmer owned cooperatives is one of the proposals that was put forth by our Vision 2005 task force on agriculture. They recognized that the only way we were going to have economic development in rural areas is if we do it ourselves. Whatever we can do to add value and market our own products will benefit not only the producers but the economy of the state and the locality that it is in. The cooperative law has not been updated for 60 years. So it is time to bring it up to date. The bill is to facilitate closed farm cooperatives.

Proponents' Testimony:

Ralph Peck, Director, MT Department of Agriculture. We worked with grain growers this past year as they looked at forming a farmer-owned cooperative in Montana. Our concern was that they were doing that action across the border in N.D. The majority of these people would be Montana producers. The plant is located in Montana and we want to continue to build our agricultural industry in Montana. We talked about the differences and the ability to form the farmer-owned cooperative in Montana versus N.D. In fact, Montana growers in the Sidney and Culbertson areas provided a list from their attorney that outlined why they were going to move to N.D. and incorporate that cooperative in N.D. also. That list has been incorporated into this bill that would allow us the same opportunity for agricultural producers to meet the same requirements that N.D. had. This does resolve issues and would allow producers to form farmer-owned cooperatives in Montana without encumbering them with paperwork and allow them to do it on a more equal basis with other states and still provide them with the protection they need in Montana.

Bob Stevens, MT Grain Growers Assoc. We support **SB 296** and feel it will simplify the laws.

Scott Kulbeck, MT Farm Bureau Federation. We rise in support of this bill. It will help producers and will help them capture more of the value added market. At our Nov. convention our members passed a resolution that supports the Vision 2005 task force. We feel this bill will help accomplish one of those goals.

Gary Wiens, MT Electric Cooperatives Assoc. We are here to express our support for this bill. MT Farmers' Union asked me to speak on their behalf in their support of this bill. Montana's electric coops have a keen interest in this legislation because we are concerned with the need for value added economic development in rural Montana. We believe in the cooperative concept. It works for different areas. Economic development that has occurred in N.D. as a result of the agricultural cooperative law has been remarkable. They have developed and constructed a pasta plant in Carrington, N.D., a bison meat processing plant in New Redford, and a corn milling plant in Wahpeton, N.D. We urge your support.

David Sagmiller, MT Ag Business Assoc. We support **SB 296**. We ask for your support as well.

Candace Payne, Women Involved in Farm Economics. We rise in support of this bill. We work on the 2005 project and believe

this bill is an attempt to help the economic development in the ag community. We hope you will support this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. NELSON closed. I will leave this in the committee's hands and I hope you will look at this favorably.

{Tape : 2; Side : A; Approx. Time Counter : 7.8; Comments : The Executive Action on SB 296 was not recorded on the tape at this point. The tape was not running.}

{Tape : 2; Side : A; Approx. Time Counter : 8.1}

EXECUTIVE ACTION ON SB 296

Motion/Vote: SEN. MCCARTHY moved that SB 296 DO PASS. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 82

Motion/Vote: SEN. ROUSH moved TO RECONSIDER ACTION TAKEN ON SB 82 ON 2-2-99. Motion carried unanimously. 5-0

Motion: SEN. COCCHIARELLA moved that SB 82 DO PASS.

Motion: SEN. COCCHIARELLA moved that SB 82 BE AMENDED.

Discussion: CHAIRMAN JOHN HERTEL said that he had spoken with the sponsor, the insurance people and Mr. Steve Bulloch, who pleaded to have this bill reconsidered. They have no problems with the amendments of SEN. ROUSH had presented. **Mr. Campbell, Legislative Counsel**, has indicated some difficulty without the amendments of the Department of Justice. **Mr. Campbell** said that the amendments of SEN. ROUSH'S, when he got them, brought up a question about how to put them because grammatically it didn't fit. However he did know that the Dept. and others who have come forward said they did not have problems with SEN. ROUSH'S amendments. He then presented the amendments that he had put together--both SEN. ROUSH'S and the Depts **EXHIBIT (bus27a10)**. He

asked the committee to look at the second amendment and explained the new language. The rest of the amendments went together fine.

SEN. ROUSH said in hearing the explanation and in speaking to the person who wanted his amendments, there seems to be no problem in putting the two amendments together.

SEN. COCCHIARELLA asked **Mr. Bulloch** to explain why the change from proprietary business information to personal information protected. . . **Mr. Bulloch** said it would insert two things: one of which is personal information protected by privacy right and also trade secrets. The personal information is included in the insurance industry and in gambling. Through the licensing process, there is going to be information that is obtained that isn't necessarily the business' information. It could be anything from an individual's social security number to an individual's bank account. It is important that those kinds of things are protected. With the switch from proprietary business to trade secrets, we are attempting to protect the business' information and go to the outer limits of what the court says a business can withhold from public view. The court consents to trade secrets. With the use of proprietary business we run into some concerns, because in other than the original copy of **SB 82**, the words "proprietary business information is not used at all in the code. The code case law does not every define that. Trade secrets are defined in the code.

{Tape : 2; Side : A; Approx. Time Counter : 20.2}

Mr. Campbell explained that the issue here is a private person's right to know versus someone else's right to privacy. Constitutionally, the right to privacy in the Montana Constitution is secondary to the public's right to know. You must overcome the public's right to know in order to assert your privacy rights.

Mr. Bulloch contends that the state is doing a better job of protecting business' information and individuals' information by using the words "trade secrets".

SEN. COCCHIARELLA asked the committee to look at number one and wondered if there was any issue that should be explained. **Mr. Bulloch** said that the request had come from the Dept. of Justice. In the Great Falls Tribune vs. Day Case, the Supreme Court basically blew open our RFDR process. They said that competitive concealed bids can no longer be kept closed until after the contract has been executed. There are only certain bits of information that can be withheld at any time. The Dept. of Administration is actually setting forth those areas that the

Court has recognized that they can continue to withhold. The Dept. drafted these amendments and they meet constitutional muster. **SEN. COCCHIARELLA** said that the next amendment is number seven. **Mr. Bulloch** said that current law during an investigation conducted by the State Auditor's office would allow the investigation hearings to be held confidential. Then further allows that once the State Auditor has completed his investigation report, it is not open to public view for thirty days after the completion of the report. We are re-inserting quite a bit of the language that is currently in the code to protect these companies from disclosure prior to the point that they have a chance to act on it. **SEN. COCCHIARELLA** said that the next amendment is number seventeen, line fifteen. **Mr. Bulloch** said that there are two provisions dealing with drivers' license--both the registration and the records information. That one pertains to the registration. Right now, under the federal law of driver protection, if an individual says no, I do not want personal information released from my registration records, then the Dept. will not release that information. That law is still the law of the land, but it is questionable if it will be upheld. By replacing the word "and" and replace with "or" it would provide protection for the individual. The second provision pertains to drivers' records. It protects those provisions of the drivers' records like your photo, your address, etc. These will not be released unless the public's right to know exceeds an individual's privacy right.

SEN. MCCARTHY asked **Mr. Bulloch** what his definition of "individual privacy" is. **Mr. Bulloch** said that this has not been defined. The court goes more or less by the standpoint that more often than not it is an address or a social security number or a photo. It would be difficult to enumerate throughout what could be subject to an individual privacy protected by the Constitution.

Motion/Vote: **SEN. COCCHIARELLA** moved that SB 82 DO PASS AS AMENDED. Motion carried unanimously. 6-0

ADJOURNMENT

Adjournment: 11:05 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus27aad)